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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 744

COMMONWEALTH OF KENTUCKY, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION

The Commonwealth of Kentucky, Petitioner, hereby petitions the Court for a writ of certiorari to be issued to review a judgment of the United States Court of Claims entered December 3, 1958, granting motions for summary judgment by the Respondent, United States of America. The decision and judgment below is reported in 168 F. Supp. 219. (See Appendix I attached to Petition of Hughes Transportation, Inc.)

STATEMENT OF JURISDICTION

The grounds on which the jurisdiction of this Court is invoked are:

1. The Court of Claims has decided an important question of Federal Constitutional and statutory law against the validity of State minimum rate regulation of intrastate contract motor carriers using State highways for transportation of Government property which has not been, but should be, settled by this Court; and such decision is in conflict with applicable decisions of this Court, including *Penn Dairies* v. *Milk Control Commission*, 318 U.S. 261 (1943).

2. The decision of the Court of Claims nullifying the application of State minimum contract carrier rate laws to intrastate transportation of property for the United States impairs the integrity and effectiveness of such laws contrary to the Tenth Amendment of the Constitution of the United States.

3. The decision and judgment of the Court of Claims of which review is sought was decided and entered on December 3, 1958.

4. Title 28, U. S. Code, Sections 1255(1) and 2101(c) (Act of June 25, 1948, c. 646, 62 Stat. 928, 961) are believed to confer on this Court jurisdiction to review the decision and judgment in question by writ of certiorari where, as here, the Petition is filed within ninety days after entry of such judgment.

QUESTION PRESENTED

The question presented for review is whether in an action by a motor vehicle contract carrier to recover charges for transportation of property of the United States between points entirely within Kentucky on the basis of nondiscriminatory minimum tariff rates prescribed by Kentucky law such requirement of Kentucky law is invalid under the Constitution and laws of

the United States, where such State law allows no rate exception for transportation of property of the United States.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Article VI, Clause 2, and the Tenth Amendment of the Constitution of the United States; and the relevant provisions of the Armed Services Procurement Act of 1947 (Act of February 19, 1948, c. 65, 62 Stat. 21 *et seq.*), Chapter 281, Kentucky Revised Statutes, and Regulations under such Kentucky statutes are set forth in Appendix II attached to Petition of Hughes Transportation, Inc.

STATEMENT OF THE CASE

Beginning in 1948 and from time to time through the year 1952 Hughes Transportation, Inc. transported numerous truckloads of explosive materials for the Department of the Army. All of such transportation involved in these suits took place on the highways of and between points entirely within the State of Kentucky under contract carrier permits granted by the Division (Department) of Motor Transportation of Kentucky.

Hughes had quoted rates to the Government for the transportation of "Class A-Explosive Ammunition" between interstate points and between Kentucky points, effective March 13, 1950, as follows:

"Subject to Rail or Motor Truck Rates which ever is lower,

Minimum Weight	Classification
20,000	75%
*25,000	65%

Less Truck Load Shipments subject to Rail Less Carload Rates Or Motor Truck Less Truck Load Rates whichever is lower.

* Bills of lading may be cross referenced on any particular shipment to take advantage of lower classification."

Hughes submitted bills to the Government and collected charges for its transportation of Army explosives at rates which were less than those prescribed by Kentucky Law, as contained in an applicable intrastate motor carrier tariff on file with the Kentucky Department of Motor Transportation. After Hughes had transported numerous shipments of Army explosives a dispute arose over the proper interpretation of Hughes' rate quotation of March 13, 1950. The General Accounting Office, claiming that the charges made thereunder were higher than provided therein, deducted the claimed excess from amounts due Hughes for later transportation services.

Hughes sued the United States in the Court of Claims (Case No. 525-52) for the amounts withheld by the General Accounting Office and, in the alternative, for the higher difference between the amounts collected and the amounts required under the intrastate motor carrier tariff rates prescribed by the Kentucky Statutes and Regulations thereunder. The jurisdiction of the Court of Claims was invoked under Title 28, U. S. Code, Section 1491 (Act of June 25, 1948, c. 646, 62 Stat. 940). The Commonwealth of Kentucky intervened and contended that Hughes was required to recover the minimum rates prescribed by Kentucky law. The parties filed cross-motions for summary judgment.

By its decision on May 4, 1954 (*Hughes Transp. Inc. v. United States*, 121 F. Supp. 212, 128 Ct. Cl. 221), the Court of Claims interpreted Hughes' quotation to the Army as requiring the application of the higher minimum uniform tariff rates prescribed by the Kentucky Law and thereafter on October 5, 1954, entered judgment in favor of Hughes for $122,834.31. Meanwhile Hughes had filed an additional suit in the Court of Claims (Case No. 208-54) based on similar intrastate Kentucky shipments for the Army and claiming the difference between the amounts collected or retained and the amounts required under the Kentucky tariff.

The Government moved for reconsideration of the decision of May 4, 1954, and requested, in the alternative, that it be allowed to offer evidence showing that Kentucky had in fact exempted the explosives transported from the rates prescribed by the Kentucky tariff. The Court of Claims, on July 12, 1955, granted the last alternative request and referred the matter to a Commissioner to take evidence. No further action was taken by the Commissioner on the referral.

Following the decision of this Court in *Public Utilities Commission of California* v. *United States*, 355 U.S. 534 (1958) the Government again filed motions for summary judgment and dismissal in both cases before the Court of Claims, based solely on the *California* decision of this Court. The Court of Claims, by its decision of December 3, 1958, of which review is sought by this Petition, held that for the reasons stated in a decision entered on the same day in *Union Transfer Co. v. United States*, 168 F. Supp. 217, the imposition of the prescribed Kentucky tariff rates was ineffective and granted the Government motion for summary judgment to that extent.

ARGUMENT IN SUPPORT OF ALLOWANCE OF THE WRIT

The Government motion for summary judgment and its grant by the Court below was based solely upon the decision of this Court in *Public Utilities Commission of California* v. *United States*, 355 U.S. 534. The opinion of the Court below (168 F. Supp. 219) stated its decision on this point as follows:

> The Government has made, in each case, a motion for summary judgment. It says that the decision of the Supreme Court of the United States, of January 7, 1958, in *Public Utilities Commission of California* v. *United States*, 355 U.S. 534, is controlling in these cases, and that the attempt of the Commonwealth of Kentucky to impose its prescribed rates upon these shipments is ineffective. For the reasons given in the case of *Union Transfer Co.*, No. 527-56, this day decided, we sustain the Government's position, and to that extent the Government's motions are granted.

The reasons referred to in its contemporaneous decision in *Union Transfer Co.* v. *United States* (Ct. Cl. No. 527-56) 168 F. Supp. 217 were stated as follows:

> "The Government has filed a motion for summary judgment, on the asserted ground that the Supreme Court of the United States, on March 3, 1958, in the case of *Public Utilities Commission of California* v. *United States*, 355 U.S. 534 held that a state could not constitutionally regulate rates to be charged to the United States for transportation such as that here involved.
>
> "The plaintiffs urge that the *California* decision is distinguishable. They point out that the California statute which was held to be unconstitutional authorized the California Commission to permit carriers to transport property for the United States at reduced rates, "to such ex-

tent and subject to such conditions as (the Commission) may consider just and reasonable." That meant that a reduced rate which was agreeable to the United States and the carrier would have to be submitted to and approved by the Commission before it would be lawful. They point out that there was no such unwieldly procedure in Nebraska; that Nebraska prescribed uniform rates for all shippers, including the United States, and hence did not invite or require or permit the United States to seek the approval of the Commission for reduced rates.

The Plaintiffs argue that all that the Nebraska laws and tariffs did was to make the cost of shipments by the United States greater than it would have been if the carriers, willing to carry for less, had been allowed to do so. The plaintiffs quote certain language from the Supreme Court's opinion, which, they urge, shows that the objectionable feature of the California statute was not the increase in costs which it caused, but the inconvenient procedure prescribed by it. We think the plaintiffs' argument is a legitimate one, in view of some of the language in the Supreme Court's opinion, but, reading the opinion as a whole, we think the *California* decision governs the instant case, and that Nebraska's attempt to impose its prescribed rates upon the United States is invalid, because it is in violation of the Supremacy Clause of the Constitution of the United States.

The decision of the Court of Claims misapplies the *California* case. It ignored the very differences in circumstances relied upon by the majority of this Court in the *California* case to distinguish it from its earlier decision in *Penn Dairies, Inc. v. Milk Control Comm.*, 318 U.S. 216 (1948) among others.

In the *California* case the State statute declared unconstitutional attempted to vest discretionary authority

in a State agency to determine in individual cases whether and to what extent reduced rates for common carrier transportation services to the Government would be permitted. This Court emphasized those discretionary provisions of such State law as the basis for its decision against validity of the State law (355 U.S. at pp. 535, 537, 538, 540). Here in Kentucky, however, the State has only enacted statutes and regulations thereunder which prescribe nondiscriminatory minimum rates for contract motor carriers of property at the level of the lawfully filed tariff rates of common carriers by motor vehicle. (Ky. Rev. Stats. (1948), §§ 281.240, 281.250; Ky. Rev. Stats. (1950), §§ 281.590, 281.685, 281.695; Department of Motor Transportation Regulations, (1942) D. M. T. Nos. 1(B); (1945) D. M. T.-12, Part II, Par. 11; DMT-15 (II 6) 1950; (1952) DMT 6.04; *Baker* v. *Glenn*, 2 F. Supp. 880 (D. C. E. D. Ky., 1933))

In the *California* case this Court distinguished its decision in *Penn Dairies*, by referring to a conflict in the later case between a federal policy of negotiated rates and a State policy of regulation of such negotiated rates. But *Penn Dairies* upheld State prescribed minimum rates on Government contracts where as here the only possible impact on the Government is to increase its costs (318 U.S. at p. 270). In a suit in the Court of Claims to collect lawfully prescribed rates after the transportation event none of the preshipment regulatory impediments to Government shipments referred to by this Court in the *California* case exist or would be relevant. In such a case like this the only impact on the Government is the amount to be paid for the service.

The Armed Services Procurement Act of 1947, which was in effect at the time of the shipments here involved, did not in express terms set aside otherwise valid State law prescribing minimum rates for contract transportation services to the Government. Nor were there at that time any federal regulations lawfully prescribed thereunder which either expressly or impliedly required nullification of such State laws. That federal Act was derived from a long series of enactments referred to and analyzed in *Penn Dairies* (318 U.S. at pp. 271-275). The then effective comparable statutes, substantially the same as the Armed Services Procurement Act of 1947, were held in *Penn Dairies*, not to require the conclusion that they evidenced a federal policy in conflict with State minimum price laws. (318 U.S. at p. 275). The decision in the *California* case does not overrule the decision in *Penn Dairies* but distinguishes it on grounds which make the *California* decision inapplicable to this case.

The regulation of the intrastate rate contracts of private motor carriers who use State highways to carry on their business has long been recognized as a legitimate subject of State concern under the police powers reserved to the States by the Tenth Amendment. The prescription of non-discriminatory minimum rates for such contract motor carriers to protect the public interest in the maintenance of State highways and their use by carriers has been specifically upheld by this Court as a part of that police power. *Stephenson* v. *Binford*, 287 U.S. 251, 273-276 (1932).

The decision of the Court below, nullifying such State prescribed minimum contract rates insofar as

applicable to shipments of Government property over State highways substantially destroys the effectiveness of the Kentucky laws referred to above. Rate cutting practices of contract motor carriers in competition with common carriers for Government business can only result in inability of the States effectively to control the use of their highways for purposes of transportation. Transportation of Government property within Kentucky, in common with other areas of the United States, is so great in comparison with other non-Government traffic that the nullification of State minimum rate laws in this area impairs the integrity of and goes far to make ineffective a large part of such State regulation of carriers rendering transportation services generally.

Respectfully submitted,

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Nos. 741, 742, 744

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OCTOBER TERM, 1958

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v.

UNITED STATES OF AMERICA

HUGHES TRANSPORTATION, INC., PETITIONER

v.

UNITED STATES OF AMERICA

COMMONWEALTH OF KENTUCKY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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Solicitor General,
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In the Supreme Court of the United States

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v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

In the *Hughes Transportation* case, Nos. 742 and 744, the opinion of the United States Court of Claims (H. Pet. App. pp. 1a, 3a) is reported at 168 F. Supp. 219.

In the *Union Transfer* case, No. 741, the opinion of the United States Court of Claims (U. Pet. App., pp. 20-23) is reported at 168 F. Supp. 217.[1]

JURISDICTION

The judgments of the United States Court of Claims in both cases were entered on December 3, 1958. The petitions for writs of certiorari were filed on March 2, 1959 in Nos. 741 and 742 and on March 3, 1959 in No. 744. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the court below correctly applied *Public Utilities Commission of California v. United States*, 355 U.S. 534, in holding that the States cannot nullify agreements between the United States and motor carriers for intrastate transportation of federal property at rates lower than those prescribed generally by State tariffs.

STATUTES AND REGULATIONS INVOLVED

The pertinent sections of Chapter 281 of Kentucky Revised Statutes, 1948 and 1950, and regulations under such Kentucky statutes are set forth in H. Pet. App., pp. 11a-17a.

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[1] For brevity, we shall use the abbreviations "U. Pet." and "U.R." to designate respectively the petition and record in No. 741, and "H. Pet." and "H.R." to designate respectively the petition and record in No. 742. As the petition and record in No. 744 are, in all practical effect, identical to those in No. 742, they will not be cited separately.

The pertinent sections of Chapter 75 of the Nebraska Revised Statutes are set out in U. Pet. App., pp. 24-27, and in an appendix hereto, *infra*, p. 12.

STATEMENT

These cases involve suits by motor carriers to collect from the United States the difference between the charges they made to and collected from the United States for intrastate shipments of Government property and the higher charges to which the carriers claim they are entitled under the tariffs of their respective States. In each case the United States moved for summary judgment on the basis of this Court's decision in *Public Utilities Commission of California* v. *United States*, 355 U.S. 534. The Court of Claims granted both motions, holding that under the rule of the *California Commission* case the State tariffs could not be applied to intrastate shipments of property for the United States.

Nos. 742 and 744 (Hughes and Kentucky)

The petitioner in No. 742, a motor vehicle contract carrier certified by the Kentucky Department of Motor Transportation, transported for the United States Department of the Army in 1948 and 1950 shipments of ammunition between Army installations located within Kentucky (H.R. Doc. 1, p. 2). The petitioner billed the Government and was paid for these shipments pursuant to a special rate which it had given to the Department of the Army (H.R. Doc. 1, pp. 2-3). This special rate was less than that prescribed by Kentucky, as contained in applicable intrastate motor carrier

tariffs on file with the Kentucky Department of Motor Transportation which had not been waived by that Department (H.R. Doc. 1, pp. 5-7).[2]

After the Government had paid the bills submitted by the petitioner, a dispute arose as to the interpretation of the shipping contract (H.R. Doc. 1, pp. 5-7). The Government concluded that under the contract terms the petitioner had been overpaid and, accordingly, reimbursed itself from other sums due petitioner (H.R. Doc. 1, p. 5). The petitioner thereupon filed the present suit against the United States in the Court of Claims to recover the sums deducted. Alternatively, the petitioner sought the difference between the net amount it had quoted to the Government and had received and the higher amount prescribed by the applicable Kentucky tariffs. It based the latter demand on the contention that, as the shipments were in intrastate commerce, they were subject to rate regulation by Kentucky (H.R. Doc. 1, p. 8). In a second suit in the Court of Claims based on similar shipments, the petitioner sought recovery only on the basis of the applicability of the Kentucky tariff (H.R. Doc. 21). The Commonwealth of Kentucky intervened in both proceedings (H.R. Docs. 7, 30).

The Court of Claims in [illegible] case entered a judg-

[2] Prior to June 15, 1950, the Department of Motor Transportation was called the Division of Motor Transportation. The change came about through the enactment of a new Motor Carrier Law effective June 15, 1950, (H.R. Doc. 14, pp. 154-55). For brevity we will term the state agency generally as the "Department of Motor Transportation." The regulations of the old Division of Motor Transportation were continued in effect until December 10, 1950. As the shipments here in issue took place during the effectiveness of both the old and the new Acts and their respective regulations, both are here material. Relevant portions of each are quoted in H. Pet. App., pp. 11a-17a.

ment for the petitioner, holding, *inter alia*, that the Kentucky regulations could validly be applied to intrastate shipments made by the United States (H.R. Doc. 12). *Hughes Transp., Inc.* v. *United States*, 128 C. Cls. 221, 121 F. Supp. 212. The case was then referred to a Commissioner to take evidence on whether Kentucky had exempted the ammunition from its tariff (H.R. Doc. 16). *Hughes Transp., Inc.* v. *United States*, 132 C. Cls. 804.

The matter stood in the above posture when this Court decided *Public Utilities Commission of California* v. *United States*, 355 U.S. 534. The Government then moved for summary judgment in both cases,[3] based on the *California Commission* decision (H.R. Doc. 18). The Court of Claims granted the Government's motions, holding that by the authority of *California Commission* the application of the Kentucky rates was invalid (H. Pet. App., pp. 1a-3a). Both the carrier and the State have petitioned for certiorari.

No. 741 (Union Transfer)

The petitioners, motor vehicle common carriers certified by the Nebraska Railway Commission, transported for the United States Departments of the Army and the Navy in 1952-1955 shipments of ammunition between various military installations and depots located within the State of Nebraska (U.R. 2-3, 9-124).

On February 1, 1955, the Nebraska State Railway Commission ordered the petitioners to collect from the Federal Government all undercharges which occurred

[3] In the first case the Government sought and was granted only partial summary judgment, leaving still to be litigated the interpretation of the negotiated contract.

subsequent to January 1, 1942, due to carriage of property for the United States at rates lower than those prescribed by the Nebraska tariff for commercial shipments (U.R. 4, 113-14, U. Pet. App., pp. 28-29). The petitioners, following the order of the Railway Commission, filed claims with the United States General Accounting Office for the undercharges. Upon their disallowance, the petitioners sued the United States in the Court of Claims to recover the difference between the charges they made and collected from the Government and the higher charges prescribed by the Nebraska tariff (U.R. 5-7).

The Government moved for summary judgment on the ground that the matter was controlled by this Court's decision in *Public Utilities Commission of California v. United States*, 355 U.S. 534 (U.R. 115-16). The Court of Claims granted the Government's motion, holding that by the authority of *California Commission* intra-Nebraska shipment of property by the Government was not subject to rate regulation by Nebraska (U. Pet. App., pp. 20-23).

ARGUMENT

The only question presented by these petitions was settled by this Court in the *California Commission* case, *supra*, only one year ago.[4] There, the Court ruled that, on shipments of federal property, a State can not interfere with the Federal Government's attempts to negotiate with a carrier for a rate lower than that charged private shippers. The facts presented by the instant case clearly fall within the principle set forth in the

[4] The Petitioner Hughes participated as *amicus curiae* in the *California Commission* case. At that time it presented substantially the same arguments on which it now wishes the Court again to pass.

California Commission case and do not call for a further review by this Court. Also, certiorari should be denied in No. 741 (*Union Transfer*) on the additional and independent ground that new state legislation has deprived the case of importance.

1. In the *California Commission* case, this Court found that "numerous and extensive" regulations, promulgated to carry out the basic program of the Armed Services Procurement Act and having "the force of law, * * * sanction the policy of negotiating rates for shipment of federal property and entrust the procurement officers with the discretion to determine when existing rates will be accepted and when negotiation for lower rates will be undertaken." 355 U.S. at 542-43. The California statute would have permitted "this discretion of the federal officers [to] be exercised and reduced rates used only if [its] Commission approves." 355 U.S. at 543. In these circumstances, this Court found a clear conflict between the national law and State law, and ruled that, under the supremacy clause of Article VI of the Constitution, the former must prevail.

The exact same conflict exists in the *Hughes* case (Nos. 742, 744). The regulations of the Kentucky Department of Motor Transportation provide that, though rates to be charged by a contract carrier must ordinarily be no less than the minimum prescribed for common carriers, the Department may approve a different rate. (1949) D.M.T.-12, Part II, par. 11 (H. Pet. App., p. 15a); (1950) D.M.T.-15, Part II, par. 6 (H. Pet. App., pp. 15a-16a). Though the language here and that of the California statute differ somewhat, their substance is the same. Under the regulatory

scheme of either State, federal officers could exercise their discretion under federal law to negotiate reduced rates only with the approval of State officers.

Notwithstanding the clear provision of the Kentucky regulations to the contrary, petitioners Hughes and Kentucky contend that the Kentucky scheme of regulation differs from that of California in that the Kentucky Department does not have discretion to allow the Government and the contract carrier to negotiate rates lower than those provided by the Kentucky tariff. They assert that this difference distinguishes the Kentucky tariff structure from that of California. The petitioners in *Union Transfer* (No. 741) present the same argument as concerns the Nebraska regulatory scheme. However, assuming *arguendo* that the Kentucky and Nebraska situations do differ from that of California, the conflict between federal law and State law in the instant cases is even more direct than in the *California Commission* case. For, if the petitioners' argument and attempted distinction are correct, Kentucky and Nebraska laws will then be allowed completely to forbid federal officers from discharging their function under the federal regulations. There would be an absolute bar against their negotiating for rates below those currently established for common carriers. Thus, any absence of discretionary authority to permit negotiation for reduced rates, far from being a distinguishing point as petitioners claim (H. Pet. 7-8, U. Pet. 10-12), makes these stronger cases for the application of the basic principle enunciated in *California Commission*, *i.e.*, that under the supremacy clause a State regulation must yield where its enforcement would impair or frustrate the functioning of a federal program. In fact, the absence of the authority to ap-

prove reduced rates would eliminate one of the principal grounds on which the dissent in the *California Commission* case was based. 355 U.S. 548-552.

The petitioners' reliance on *Penn Dairies* v. *Milk Control Comm'n*, 318 U.S. 261, is as misplaced here as was appellant's reliance on that decision in the *California* case. There, the Court noted that the *Penn Dairies* case "can likewise be put to one side." 355 U.S. at 543. Identical considerations require that the *Penn Dairies* case be put aside here. As the court below noted in the instant cases, a reading of the opinion in *California Commission* shows clearly that this Court did not reach its result in that case because of the procedure existing in California but because of what it termed "the conflict between the federal policy of negotiated rates and the state policy of regulation of negotiated rates * * *." 355 U.S. at 544. This conclusion has also been reached by the Supreme Court of Pennsylvania: *United States* v. *Pennsylvania Pub. Util. Comm'n*, 393 Pa. 537, 143 A. 2d 341, certiorari denied, 358 U.S. 884, and by the Supreme Court of Texas, *Railroad Comm'n of Texas* v. *United States*, 317 S.W. 2d 927, 930. Since the very same conflict exists here, the *Penn Dairies* case is plainly not in point.

2. The petitioners in No. 741 (*Union Transfer*) assert, as their reason for seeking payment from the Government in excess of those to which they had agreed, only that they are acting in compliance with the February, 1955, order of the Nebraska Railway Commission requiring that they collect the additional amounts. (U. Pet. 7-8). This order has now become a nullity.

In September, 1955, the Nebraska legislature amended the State statute so as to exempt from the

regulatory power of the Railway Commission reduced rates for the carriage of property for the United States. Nebraska Laws, 1955, c. 285, § 1, p. 894; Rev. Stat. Neb. 75-508 (1958 reissue); Appendix, *infra*, p. 12. Further, the legislature gave this exemption retroactive effect by prohibiting the Railway Commission from imposing a "fine, penalty, or forfeiture of any kind" upon any common carrier for having "heretofore failed to collect the regularly lawfully established intrastate rate in Nebraska" for any intra-Nebraska "transportation services heretofore performed for the United States." Nebraska Laws, 1955, c. 285, § 2, p. 894; Rev. Stat. Neb. 75-508.01 (1958 reissue); Appendix, *infra*, p. 12. In so doing Nebraska removed from its Railway Commission the power to force a carrier to collect from the United States rates higher than those provided for in the carriage contract negotiated between the parties. As this amendment had retroactive effect, it rendered the order of February, 1955, a nullity.

As the petitioners' asserted reason for bringing the current action is their desire to comply with the order of the Railway Commission and as this order has been nullified by the action of the Nebraska legislature, the obligation on petitioners to seek the refund has been removed. More important, however, the change in Nebraska law has deprived this case of any importance for the future. There is no longer any need for this Court to pass upon a possible conflict between the law of Nebraska and federal law since the Nebraska legislature has acted to eliminate any inconsistency.

CONCLUSION

The decision below is correct and no question warranting further review is presented. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APRIL, 1959.

Rev. Stat. Neb. § 75-508 (reissue 1958):

Common carriers; reduced rates; when permitted. Nothing contained in the provisions of sections 75-501 to 75-512 shall prevent (1) the carriage, storage, or handling of freight free, or at reduced rates, for the United States, for the state, for any city, village, or county government, for charitable purposes, or to and from fairs and expositions for exhibition thereat; (2) the transporting free of household goods of express employees or railroad employees, moved in the services of their respective companies; (3) the transporting free of personal property of those who are employed exclusively by express companies or railroad companies; or (4) any common carrier from carrying property free, with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation.

Rev. Stat. Neb. § 75-508.01 (reissue 1958):

Common carriers; failure to collect for intrastat transportation in state performed for United States; waiver of fine, penalty, or forfeiture. No common carrier shall be subject to any fine, penalty, or forfeiture of any kind for having heretofore failed to collect the regularly lawfully established intrastate rate in Nebraska for any intrastate in Nebraska transportation service heretofore performed for the United States, as provided in section 75-508.

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